

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

C. CLARK HODGSON, JR., RECEIVER	:	CIVIL ACTION
	:	
v.	:	
	:	
MAN FINANCIAL INC., et al.	:	NO. 06-1944

MEMORANDUM

Baylson, J.

December 29, 2006

Third Party Defendants John Wallace and Edward Gobora have moved to dismiss the Third Party Complaint brought by Man Financial Inc. (“Man”) naming them as defendants.

The background of this case is set forth in prior memoranda dated December 22, 2006 WL 3791341, October 5, 2006 WL 2869532, and September 18, 2006 WL 2707397. Briefly stated, the court-appointed receiver for the Philadelphia Alternative Asset Management Company, LLC (“PAAMCo”) brought an action against Man, which acted as a futures commission broker for PAAMCo in operating an Offshore Fund (“Fund”) for which PAAMCo directed investments, and certain of Man’s employees. Man in turn brought a Third Party Complaint against Wallace, Gobora, and two other defendants, stating claims for indemnification and contribution. Man alleges that Wallace, as the Chairman of the Board of PAAMCo, and Gobora, as a high ranking employee of PAAMCo, together with Frank Eustace, who admittedly committed fraud in operating PAAMCo and the Fund, breached their fiduciary duties owed to the Fund and its investors and were negligent in overseeing the Fund. Discovery is ongoing in this case, and a revised closing date for discovery is under discussion among counsel. Dispositive

motions are scheduled to be filed on or about March 1, 2007.

In reviewing the briefs, the first dispute raised by the parties concerns the choice of law. Man asserts that New York law, rather than Pennsylvania or Delaware law as urged by Wallace and Gobora, should rule, and it appears that New York law would be more favorable to Man's claims for indemnification and contribution.

The Court has concluded that it would be error to determine the correct choice of law jurisdiction based on the papers submitted with the Motion to Dismiss. Pennsylvania, as the forum state, looks to the jurisdiction with the most significant relationship to the issues in this dispute to determine the appropriate choice of law. Because there are significant factual issues governing this question, this is not a decision which should be made merely on allegations in the Third Party Complaint and briefs, but should await conclusion of discovery. See Kvaerner U.S. Inc. v. Kemper Envtl., Ltd., No. 06-cv-403, 2006 WL 3064104, at * 4-5 (W.D. Pa. Oct. 26, 2006); General Accident Ins. Co. of America v. Fidelity & Deposit Co. of Maryland, 598 F. Supp. 1223, 1229-30 (E.D. Pa. 1984). The main thrust of Wallace and Gobora's Motion to Dismiss is that they, as an officer and an employee of PAAMCo, did not owe any duty to the Fund because the Fund was Man's customer when it suffered the losses. The extent of that duty, if any, must be determined under the law of one of these three states, and it appears that the governing principles of law as to each state on this issue are somewhat different.

Man Financial has clearly alleged acts and omissions by Wallace and Gobora, which if proven, might lead a jury to conclude that any liability which Man may owe to the Receiver should be shared with Wallace and Gobora under theories of indemnification and/or contribution. The allegations in the Third Party Complaint are sufficient to satisfy the pleading standard of

Rule 8 of the Federal Rules of Civil Procedure, and are therefore sufficient to allow this case to go forward, given the uncertainty of appropriate choice of law, to the dispositive motion stage. Specifically, Man alleges that Wallace and Gobora had actual knowledge of an allegedly “secret” sub account maintained at Man Financial, knowledge which Eustace fraudulently withheld from the investors in the Fund. Man contends that Wallace and Gobora’s failure to disclose this knowledge was a breach of duty to the investors in the Fund being managed by PAAMCo. (Third Party Compl. ¶¶ 52-92.) These paragraphs also allege that Wallace and Gobora engaged in conduct which furthered the fraud originated by Eustace and took actions that were inconsistent with their fiduciary duties. Although Wallace and Gobora assert that they had no such fiduciary duty, the Court cannot reach such a determination at this time given the uncertainty of the controlling law.

The Court notes, but need not decide at this time, the issue of whether, if Man is held liable only under a federal statute, it can seek indemnification or contribution against the third party defendants.

An appropriate Order follows.

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ORDER

AND NOW, this 29th day of December, 2006, for the reasons stated in the foregoing Memorandum, it is hereby ORDERED that the Motion to Dismiss the Third Party Complaint filed on behalf of John Wallace and Edward Gobora is DENIED.

BY THE COURT:

/s/ Michael M. Baylson
Michael M. Baylson, U.S.D.J.